IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.748 OF 2006
IN
CRIMINAL APPEAL NO.127 OF 1999

Vijay Sahdeo Karekar ... Applicant

Vs.

State of Maharashtra ... Respondents

Mr. M.K. Kocharekar for the applicant

Dr. F.R. Shaikh, Addl. P.P. for the State.

CORAM : SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.

DATED : AUGUST 2, 2007.

P.C.:-

1. The applicant is original accused 3 in Sessions Case No.1362 of 1997. He was tried along with eight others for offences punishable under sections 144, 148, 302 read with section 149 or in the alternative under section 302 read with section 34, under section 452 read with section 149 or in the alternative under section 452 read with section 34 as well as under section 427 read with section 149 or in the alternative under section 427 read with

section 34 of the Indian Penal Code (for short, “the IPC”).

2. By judgment and order dated 25/11/1998, the applicant along with accused 1, 2, 4 and 8 was convicted, inter alia, under section 302 read with section 149 of the IPC. He was sentenced to suffer imprisonment for life. Accused 5 and 6 were acquitted. Admittedly, two accused were absconding and, hence, the trial in respect of those two accused was separated. Later on, they were arrested and tried for the same offences in Sessions Case No.1118 of 1998. On 20/1/2004, both the accused were acquitted of the said charges. Basically, their defence was that there was total darkness at the scene of offence and they could not have been identified by the witnesses. This defence found favour with the learned Sessions Judge and he acquitted them.

3. The applicant had preferred a bail application, which was rejected by this court on merits. He has filed this second bail application claiming that there is a change in circumstances. Admittedly, the applicant is in jail for about 10 years.

4. We have heard the learned counsel appearing for the applicant, at some length. He submitted that though the applicant's first bail application was rejected on merits, his present bail application may be considered because of the change in the circumstances. He submitted that after the applicant was convicted, two absconding accused, who were later on arrested, were tried. In that trial, the defence adduced evidence of three witnesses. That evidence established that there was darkness at the scene of offence and, hence, the accused could not have been identified and that a mob had attacked the deceased. Accepting this evidence, the two accused, who were separately tried, were acquitted. The learned counsel submitted that the acquittal of accused Vinayak @ Vinya Bhagwan Gaikwad supports the applicant inasmuch as Vinayak is said to have been not identified by the defence witnesses because of darkness. He is acquitted on that count. This must apply to the applicant also. The learned counsel, therefore, submitted that in view of the change in the circumstances, the applicant be released on bail.

5. We find substance in the submission of the learned counsel appearing for the applicant. We have perused the evidence of the three witnesses, who were examined in Sessions Case No.1118 of 1998. DW-1 is one Sunil S. Gawade, who is the Assistant Engineer in Bombay Electric Supply and Transport Company at Mumbai. He has stated that on the day of the incident, the electric supply was cut off. DW-2 is one Baban N. Sangale, who was attached to Bhoiwada Police Station as a police constable. He has produced EPR Register. The entry in the EPR Register is to the effect that some unidentified persons have attacked the deceased. DW-3 is one Smt. Shobha T. Develekar, who has also confirmed that there was darkness at the scene of offence. On the basis of this evidence, the Sessions Court has acquitted the two accused. In our opinion, the learned counsel is right in submitting that this change in the circumstances needs to be taken into account. We may, however, not be understood to have expressed that the evidence led in one Sessions Case can be used while appreciating the evidence led in another Sessions Case where the co-accused

were tried in respect of the same incident. We make it clear that this legal issue has not been examined by us and that can be done only at the stage of final hearing of this appeal. We, however, prima facie, feel that for the purposes of releasing the applicant, who is in jail for a period of 10 years, at this stage, this is good enough material. Hence, we pass the following order.

6. The applicant - Vijay Sahdeo Karekar is ordered to be released on bail in the sum of Rs.10,000/- (Rupees Ten Thousand only) with one or two sureties in the like amount. While on bail, the applicant shall attend the R.A.K. Marg Police Station, Mumbai, once in a month. Application is disposed of.

[SMT. RANJANA DESAI, J.]

[SMT. ROSHAN DALVI, J.]